

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

SALVADOR GUDINO CHAVEZ (11),

Defendant.

No. 4:15-CR-6049-EFS-11

**ORDER DENYING AS MOOT
GOVERNMENT'S MOTION FOR EXTENSION
OF TIME AND SETTING PRETRIAL
CONFERENCES AND TRIAL TO COINCIDE
WITH CO-DEFENDANTS**

CASE MANAGEMENT ORDER

Before the Court, without oral argument, are the United States Attorney's Office's Motion for Extension of Time to File Rule 16 Expert Summaries, ECF No. 330, and related Motion to Expedite, ECF No. 331. On January 27, 2017, the Court granted the Government's motions as to the Defendants for whom case management orders had been entered. ECF No. 336. Prior to this Order, no discovery deadlines have been imposed as to Defendant Salvador Gudino Chavez (11). Accordingly, the Court denies as moot the Government's Motion for Extension of Time and Motion to Expedite as to Defendant Salvador Gudino Chavez (11).

Defendant Salvador Gudino Chavez (11) is joined for trial with co-defendants Jese David Casillas Carrillo (2), Rosa Granados (3), Francisco Duarte Figueroa (6), Gabriela Mendoza Vasquez (7), Brittney Lee Zaragoza (10), Erica Maria Solis (15), Juvenal Landa Solano (14),

1 Edgar Omar Herrera Farias (16), Juan Bravo Zambrano (19), Miguel Reyes
2 Garcia (21), Jose Adrian Mendoza (23), and Veronica Elvira Cortez
3 (24). No motion to sever has been filed. Accordingly, the Court sets
4 the pretrial conference and trial and enters a Case Management Order,
5 which sets all Defendants' cases on the same timeline. Pursuant to 18
6 U.S.C. § 3161(h)(6), the resulting period of delay is excluded under
7 the Speedy Trial Act as to Defendant Salvador Gudino Chavez (11).

8 The following Case Management Order sets forth the deadlines,
9 hearings, and requirements that the parties will observe in this
10 matter. To the extent this Order conflicts with any previously entered
11 orders in this matter, this Order shall govern. All counsel are
12 expected to carefully read and abide by this Order. The Court will
13 grant relief from the requirements in this Order only upon motion and
14 good cause shown.

15 **IT IS HEREBY ORDERED:**

16 1. The United States Attorney's Office's Motion for Extension
17 of Time to File Rule 16 Expert Summaries, **ECF No. 330**, and
18 related Motion to Expedite, **ECF No. 331**, are **DENIED AS MOOT**
19 as to Salvador Gudino Chavez (11).

20 2. **Emailing the Court.** Where this Order requires counsel to
21 email documents to the Court, all documents shall be
22 attached to the email in Microsoft Word (.doc/.docx) or
23 rich-text (.rtf) format. The subject line of each email
24 shall be formatted as follows:

25 **[Case No.]; [Case Name]; [Title of Document]**

26 (e.g.: 16-CR-9999-EFS; USA v. Doe; Trial Brief)

1 3. **CM/ECF Training.** The Eastern District of Washington uses
2 electronic filing through CM/ECF. Counsel must contact the
3 Clerk's Office to arrange CM/ECF training within 30 days of
4 appearance in this case or be otherwise experienced in the
5 use of CM/ECF either in the Eastern District of Washington
6 or another district.

7 4. **Discovery**

8 A. All discovery documents must be Bates-stamped with a
9 unique identifier and must be produced digitally in a
10 text-searchable format. The Court will grant relief
11 from this requirement only in exceptional
12 circumstances, upon motion and good cause shown.

13 B. Pursuant to the Eastern District of Washington Local
14 Criminal Rule 16, the Court presumes a defense
15 request for discovery under Federal Rule of Criminal
16 Procedure 16 for **documents and objects**, Fed. R. Crim.
17 P. 16(a)(1)(E), **reports of examinations and tests**,
18 Fed. R. Crim. P. 16(a)(1)(F), **AND expert witnesses**,
19 Fed. R. Crim. P. 16(a)(1)(G), and orders these items
20 to be disclosed. Therefore, the Court imposes a
21 reciprocal duty on defense counsel to provide
22 discovery under Rule 16(b)(1)(A-C) **for each of the**
23 **above categories**. Defendants who do not wish to
24 invoke reciprocal discovery obligations must file a
25 notice with the Court and with opposing counsel prior
26 to accepting discovery from the Government.

- 1 C. The Court further presumes a request for discovery
2 and disclosure under Federal Rules of Evidence
3 404(b), 608(b), and 609, *Brady v. Maryland*, 373 U.S.
4 83 (1963), *Giglio v. United States*, 405 U.S. 150
5 (1972), *United States v. Henthorn*, 931 F.2d 29 (9th
6 Cir. 1991), and their progeny. These items are
7 ordered to be disclosed.
- 8 D. For those discovery matters ordered to be disclosed
9 by this Order, a party shall not file a motion
10 seeking such discovery, unless the disclosing party
11 fails to timely produce such discovery.
- 12 E. Any party seeking discovery or disclosure not
13 otherwise provided for in this Order, or discovery
14 that was ordered by this Order and not timely
15 provided, shall file a motion stating the specific
16 materials sought, the legal authority for the
17 specific request, and certify that the movant has in
18 good faith conferred or attempted to confer with the
19 opposing party in an effort to obtain the discovery
20 or disclosure without court action.

21 **5. Expert-Witness Summaries**

- 22 A. Each party shall produce to opposing counsel all
23 summaries of its expert-witness testimony for which
24 disclosure is required under Federal Rule of Criminal
25 Procedure 16, by the deadlines set forth below:

26 **USAO's Experts:**

March 3, 2017

Defendants' Experts: March 6, 2017

USAO's Rebuttal Experts: March 10, 2017

Also by the applicable deadline, counsel shall email an electronic copy of the summary to the Court at SheaOrders@waed.uscourts.gov and shall simultaneously file a Notice of Compliance with this requirement.

B. All summaries of expert witness testimony must conform to Federal Rule of Criminal Procedure 16 and applicable case law interpreting that Rule. The Court will not permit an expert witness to testify about opinions which are not explicitly expressed in that expert's summary. See, e.g., *United States v. W.R. Grace*, 526 F.3d 499 (9th Cir. 2008).

c. A party is not permitted to call more than two expert witnesses on any issue, except with permission of the Court. L.R. 43(a)(3).

6. Motions Practice

A. Generally. By no later than **March 17, 2017**, all pretrial motions — including discovery motions, *Daubert* motions, and motions in limine — must be filed and served. See Fed. R. Crim. P. 12(c). All motions shall either be: (i) noted for hearing without oral argument 14 days after filing, or (ii) noted for hearing with oral argument at the pretrial conference. Responses and replies to motions must be filed in accordance with Local Rule 7.1.

1 **B. Expedited Hearing.** Any party seeking an expedited
2 hearing on a time-sensitive matter must file a motion
3 to expedite that (i) demonstrates good cause, (ii)
4 states the position of the opposing party to the
5 motion, and (iii) sets a date of hearing that is no
6 less than **seven days** after the motion's filing.
7 Should the motion to expedite require more immediate
8 judicial attention, the motion shall establish the
9 necessity for an immediate hearing, and the filing
10 party shall notify chambers staff of the motion.

11 **7. Trial Continuances**

12 **A. Motion Deadline.** All motions to continue the trial
13 must be heard before or at the final pretrial
14 conference. Any motion to continue trial made after
15 the pretrial conference has occurred will not be
16 granted absent exceptional circumstances.

17 **B. Statement of Reasons.** Pursuant to 18 U.S.C. § 3161,
18 if the Defendant seeks a continuance, a Statement of
19 Reasons in support of the motion to continue must be
20 filed contemporaneously with the motion.¹ The
21 Statement of Reasons must (i) be signed by the
22 Defendant, (ii) be signed by a certified translator,
23 if applicable, and (iii) indicate the latest date
24 upon which Defendant is willing to proceed to trial.

25 ¹ The Court's Statement of Reasons template can be found on the Eastern
26 District of Washington's public website: www.waed.uscourts.gov.

1 C. **Procedure.** Before filing a motion to continue,
2 counsel shall first contact the Courtroom Deputy at
3 (509) 943-8172 to obtain new pretrial conference and
4 trial dates consistent with the length of the
5 requested trial continuance. Thereafter, counsel
6 shall confer with opposing counsel regarding new case
7 management deadlines consistent with the new pretrial
8 conference and trial date. **All motions to continue**
9 **must include new proposed case management deadlines**
10 **(either joint or individual) to ensure the to-be-**
11 **imposed deadlines are best suited to this case.**

12 8. **Pretrial Conference**

13 A. A Pretrial Conference is **SET** for **February 21, 2017,**
14 at **1:30 p.m.** in **RICHLAND**.

15 B. The final pretrial conference is **SET** for **March 28,**
16 **2017, at 1:30 p.m.** in **YAKIMA**. At this hearing, the
17 Court will hear all remaining pretrial motions.

18 C. All pretrial conferences are scheduled to last no
19 more than **30 minutes**, with each side allotted **15**
20 **minutes** to present their own motions and resist
21 motions by opposing counsel. If any party
22 anticipates requiring longer than 15 minutes, that
23 party must notify the Courtroom Deputy at least seven
24 days prior to the hearing. **Any party who fails to**
25 **provide this notice will be limited to 15 minutes.**

1 **9. Confidential Informants (CIs).** By no later than **March 31, 2017**,
 2 the USAO shall disclose to Defendants the identity of
 3 any CIs used in the case, as well as any Giglio
 4 information, and shall advise Defendants at that time
 5 whether any CI so identified is willing to be interviewed
 6 by defense counsel.

7 **10. Grand Jury Transcripts.** The USAO shall produce copies of
 8 the grand jury transcripts for any witness it intends to
 9 call at trial by: **March 31, 2017.**

10 **11. Exhibit Lists**

11 **A.** By no later than **April 7, 2017**, each party shall file
 12 a list of exhibits the party intends to introduce at
 13 trial. Each party shall also email copies of their
 14 exhibit list to the Court at
 15 SheaOrders@waed.uscourts.gov. The parties shall
 16 provide their exhibit list in the following format:

Ex. #	Admitted	Description
1		Photograph of items seized
2		Aerial video surveillance from 1/1/2016. Start Time: 01:03:23 End Time: 01:09:54

21 Exhibit lists shall include a unique exhibit number
 22 and a brief description of the exhibit. For all
 23 exhibits consisting of an audio or video file, the
 24 exhibit list must designate the precise beginning and
 25 ending time indexes of the portion of the file the
 26 party intends to use at trial.

1 **B.** The USAO shall consecutively number their exhibits
2 from **1 to 999**. In single-defendant cases, Defendant
3 shall consecutively number exhibits from **1000 to**
4 **1999**; in multi-defendant cases, Defendants shall
5 consecutively number exhibits from x000 to x999,
6 substituting "x" for each Defendant's assigned case
7 identifier (e.g. Defendant 3 would number exhibits
8 from 3000 to 3999, etc.). Exhibits shall be pre-
9 marked for identification before trial commences.

10 **12. Witness Lists.** By no later than **April 7, 2017**, each party
11 shall file and serve a list of witnesses that party intends
12 to call to testify at trial. **The witness list must**
13 **identify the existence, but need not include the name, of**
14 **any CI the USAO intends to call to testify.** Parties shall
15 email copies of their witness list to the Court at
16 SheaOrders@waed.uscourts.gov.

17 **13. Requested Voir Dire, Trial Briefs, Proposed Jury**
18 **Instructions, and Verdict Form.** By no later than **April 7,**
19 **2017**, each party shall file requested voir dire, a trial
20 brief, proposed jury instructions, and verdict form, in
21 accordance with the requirements below. Each party shall
22 email copies to the Court at SheaOrders@waed.uscourts.gov.

23 **A. Requested Voir Dire.** The parties may request that
24 the Court include specific questions during the
25 Court's standard voir dire. Requested voir dire
26 shall not duplicate information elicited in the

1 Clerk's Office Jury Questionnaire and the Court's
2 Criminal Jury Trial Procedures Letter.

3 **B. Trial Briefs.** Trial briefs shall not exceed 20 pages
4 without prior Court approval, upon motion and good
5 cause shown. LR 39.1.

6 **C. Proposed Jury Instructions and Verdict Form.** Jury
7 instructions shall (i) address issues that are unique
8 to the case, and (ii) include instructions regarding
9 the elements of each charge or defense. If a Ninth
10 Circuit Model Jury Instruction exists for a
11 particular charge or defense, the parties shall
12 provide the model instruction or shall submit
13 argument as to why the instruction is inadequate or
14 no longer supported by law. Proposed jury
15 instructions shall be accompanied by a proposed
16 verdict form. **The parties must confer to develop**
17 **joint proposed jury instructions and the verdict**
18 **form.** The Court will only accept an individual
19 party's proposed jury instructions on those
20 points/issues upon which the parties could not agree,
21 and only if the party's memorandum accompanying the
22 individually proposed instructions sets forth the
23 legal authority and justification for why the
24 instructions are necessary.

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1 **14. Exhibits**

2 **A. Exhibit Binders.** By no later than **April 10, 2017**,
3 each party must provide to the Court two Bates-
4 stamped copies of all trial exhibits – or, in the
5 case of physical exhibits, a photograph or other
6 reproduction of the exhibit – the party intends to
7 introduce at trial. All trial exhibits shall be
8 organized sequentially by exhibit number in a three-
9 ring binder. The exhibit binders provided to the
10 Court will not be available for use by the attorneys
11 at trial.

12 **B. JERS.**

13 i. The Court utilizes the Jury Evidence Recording
14 System (JERS), a system that makes evidence
15 digitally available to the jury during
16 deliberations. **Counsel shall promptly consult the**
17 **Court's JERS Information web page² to acquaint**
18 **themselves with JERS procedures and to ensure they**
19 **acquire, retain, and provide evidence to the Court**
20 **in the necessary format.**

21 ii. By no later than **April 7, 2017**, each party who
22 intends to introduce evidence at trial must supply
23 its JERS exhibits to the Courtroom Deputy in the
24 manner and format set forth in the JERS - Basics

26

² <http://www.waed.uscourts.gov/jers-information>.

1 for Lawyers document.³ Counsel may contact the
2 Courtroom Deputy at (509) 943-8172 with any
3 questions.

4 **C. Exchange of Exhibits.** By no later than **April 7,**
5 **2017**, each party must provide to all other parties a
6 copy of the exhibits it intends to introduce at
7 trial. The exhibits must be provided in digital
8 format, unless the parties agree otherwise.

9 **15. Witnesses Requiring Counsel.** By no later than **April 7,**
10 **2017**, each party must advise the Court of any witness whose
11 anticipated testimony may warrant the exercise of his/her
12 rights under the Fifth Amendment and whether the witness
13 requires the appointment of counsel.

14 **16. Trial Notices.** By no later than **April 7, 2017**, each party
15 shall file a notice that indicates the amount of time
16 requested for voir dire and for opening statement. In
17 addition, defense counsel must indicate if his/her client
18 waives presence at sidebar and jury questions.

19 **17. Technology Readiness Meeting.** By no later than **April 10,**
20 **2017**, any party seeking to offer video or audio evidence at
21 trial must meet with Court staff at the location of the
22 trial to verify compatibility with the Court's presentation

23
24 ³ This document can be found on the Court's public website at the
following link:

25 <http://www.waed.uscourts.gov/sites/default/files/u86/JERS%20-%20Basics%20for%20Lawyers.pdf>.

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systems. The parties shall contact the Courtroom Deputy at (509) 943-8172 to arrange this meeting.

18. Trial. The jury trial is **SET** for **April 17, 2017, at 9:00 a.m.** in **RICHLAND**. Counsel and Defendants shall be prepared to meet with the Court at least 30 minutes prior to the commencement of the trial.

19. The Court finds that the delay in Defendant's trial is a reasonable period of delay resulting from the fact that Defendant is joined for trial with a co-defendant and no motion for severance has been granted. See 18 U.S.C. § 3161(h)(6). Pursuant to 18 U.S.C. § 3161(h)(6)), the Court **DECLARES EXCLUDABLE from Speedy Trial Act calculations** the period from **February 2, 2017**, the date of this Order, through **April 17, 2017**, the trial date, as the reasonable period of delay resulting from the joined trials.

20. Summary of Deadlines

PRETRIAL CONFERENCE	February 21, 2017 1:30 P.M. - RICHLAND
Rule 16 expert summaries produced to other parties and emailed to Court: USAO's Experts Defendants' Experts USAO's Rebuttal Experts	March 3, 2017 March 6, 2017 March 10, 2010
All pretrial motions, including discovery motions, Daubert motions, and motions <i>in limine</i> , filed with the Court	March 17, 2017
FINAL PRETRIAL CONFERENCE Deadline for motions to continue trial	March 28, 2017 1:30 P.M. - YAKIMA
CIs' identities, Giglio disclosures, and willingness to be interviewed disclosed to Defendants (if applicable)	March 31, 2017

Grand jury transcripts produced to Defendants	March 31, 2017
Exhibit and witness lists filed and emailed to the Court	April 7, 2017
Requested voir dire, trial briefs, jury instructions, and verdict forms filed and emailed to the Court	April 7, 2017
Exhibits delivered to all other parties	April 7, 2017
Whether any witness likely to exercise Fifth Amendment rights and requires appointed counsel	April 7, 2017
Delivery of JERS-compatible digital evidence files to the Courtroom Deputy	April 7, 2017
Trial notices filed with the Court	April 7, 2017
Exhibit binders delivered to the Court	April 10, 2017
Technology readiness meeting (in-person)	April 10, 2017
JURY TRIAL	April 17, 2017 9:00 A.M. - RICHLAND

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals Service.

DATED this 2nd day of February 2017.

s/Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge